

IN RE: SOCIAL MEDIA ADOLESCENT
ADDICTION/PERSONAL INJURY
PRODUCTS LIABILITY LITIGATION

This Document Relates to:
All Actions

Case No. 4:22-md-03047-YGR
MDL No. 3047

**ORDER DENYING DEFENDANTS' MOTION
TO CERTIFY INTERLOCUTORY APPEAL**

Re: Dkt. No. 473

Defendants Meta, Google, ByteDance, and Snap¹ move to certify an interlocutory appeal of three issues, namely whether: (i) Section 230 of the Communications Decency Act (“CDA”) bars plaintiffs’ claims; (ii) the First Amendment bars plaintiffs’ claims; and (iii) defendants’ social media platforms are “products” for the purposes of plaintiffs’ products liability claims (“Identified Issues”).²

Having carefully considered the briefing and parties’ arguments on January 26, 2024, and for the reasons below, the Court **DENIES** defendants’ motion. In summary, the motion is, at best, premature. Currently, the Court has scheduled a multi-tracked approach to addressing myriad legal issues between the defendants, both corporate and individual, and three categories of plaintiffs (attorneys general, school districts, and individuals) many of which overlap with the Identified Issues. Certifying an interlocutory appeal at this stage, prior to the conclusion of this motion practice, would provide the Court of Appeals with a partial record of the legal issues,

¹ For clarity, the primary defendants in this litigation are Alphabet, Inc.; ByteDance, Inc.; Facebook Holdings, LLC, Facebook Operations, LLC, Facebook Payments, Inc., Facebook Technologies, LLC (collectively, “Facebook”); Google LLC; Instagram, LLC; Meta Platforms, Inc., Meta Payments, Inc., Meta Technologies, LLC (collectively, “Meta”); TikTok, Inc., TikTok, LLC, TikTok, Ltd. (collectively, “TikTok”); Snap, Inc. (“Snap”); and YouTube, LLC.

² See Dkt. No. 473, Defendants’ Motion for Certification of Interlocutory Appeal (“Mot.”) at 1.

1 invite later piecemeal appeals, and disrupt coordination among parallel proceedings.

2 **I. BACKGROUND**

3 Courts overseeing multidistrict litigation (“MDLs”) frequently phase motion practice to
4 address efficiently myriad legal issues before proceeding with discovery, and then in parallel.
5 Here, motion to dismiss briefing has been organized into several tracks. To start, defendants filed
6 motions to dismiss the priority claims identified by the plaintiffs. (See Dkt. No. 164, Case
7 Management Order No. 5.) On November 14, 2023, the Court held that certain of those claims
8 were viable (see Dkt. No. 430), opening discovery.

9 On November 21, 2023, the Court established four additional motion to dismiss tracks,
10 covering the remainder of plaintiffs’ claims: (i) the thirty-three³ state Attorneys General
11 Complaint as well as Claims 7, 8, and 9 of the Individual Plaintiffs’ Master Complaint; (ii) the
12 remaining Individual Plaintiffs Master Complaint claims; (iii) the Local Government and School
13 District Plaintiffs’ Master Complaint; and (iv) claims asserted against defendant Mark Zuckerberg
14 in his individual capacity. (See Dkt. No. 451, Case Management Order No. 6 at 2.) These motion
15 to dismiss tracks have varying end dates between January, February, and March of 2024, and not
16 all opening briefs have been filed yet. (See *id.* at 2–3.)

17 Additionally, two key sets of cases proceed outside of this MDL. First, hundreds of
18 California state cases have been consolidated through California’s Judicial Council Coordination
19 Proceedings (“JCCP”) process before Judge Kuhl in California Superior Court (JCCP No. 5255).
20 Second, eight additional state Attorneys General have filed lawsuits alleging similar state
21 consumer protection law violations against defendant Meta in their state courts: the District of
22 Columbia, Massachusetts, Mississippi, New Hampshire, Oklahoma, Tennessee, Utah, and
23 Vermont. (Dkt. No. 434, Status Update Regarding Plaintiff States’ Leadership at 3.)

24 The instant motion arises from the Court’s 52-page order granting in part and denying in
25 part defendants’ motion to dismiss plaintiffs’ priority claims. (Dkt. No. 430.) On December 12,

26
27 ³ The Court just received notice that the complaint filed by the Montana Attorney General
28 is also being transferred here.

1 2023, Defendants moved to certify three questions at issue in the Court’s November 14, 2023,
2 order for interlocutory appeal under 28 U.S.C. § 1292(b):

- 3 1. Whether Section 230 of the Communications Decency Act, 47 U.S.C. § 230, or the
4 First Amendment bar claims for failure to warn of an alleged design defect where
5 claims targeting the same underlying alleged defective design are barred.
- 6 2. Whether the First Amendment bars claims that Defendants’ services are defective
7 because they lack “robust age verification” and “effective parental controls.”
- 8 3. Whether defendants’ services (or certain features of their services) constitute
9 “products” for purposes of product liability law.

10 (Mot. at 1.)

11 II. **LEGAL STANDARD**

12 Under the final judgment rule, the courts of appeal “have jurisdiction of appeals from all
13 final decisions of the district courts of the United States.” 28 U.S.C. § 1291. However, section
14 1292(b) permits a federal district court to certify a non-dispositive order for interlocutory review
15 where: (1) the order “involves a controlling question of law,” (2) “as to which there is substantial
16 ground for difference of opinion,” and (3) “an immediate appeal from the order may materially
17 advance the ultimate termination of the litigation.” *Ramirez v. Bank of Am., N.A.*, No. 4:22-CV-
18 00859-YGR, 2023 WL 3149261, at *1 (N.D. Cal. Mar. 27, 2023) (quoting 28 U.S.C. § 1292(b)).
19 Section 1292(b) is a “narrow exception to the final judgment rule,” *Couch v. Telescope Inc.*, 611
20 F.3d 629, 633 (9th Cir. 2010), and the Ninth Circuit has emphasized that section 1292(b) “is to be
21 applied sparingly and only in exceptional cases,” *United States v. Woodbury*, 263 F.2d 784, 788
22 n.11 (9th Cir. 1959).

23 Further, “Congress chose to confer on district courts first line discretion to allow
24 interlocutory appeals.” *Scally v. PetSmart LLC*, No. 4:22-cv-06210, 2024 WL 37222, at *1 (N.D.
25 Cal. Jan. 2, 2024) (quoting *Swint v. Chambers Cnty Comm’n*, 514 U.S. 35, 47 (1995)). Even if all
26 three statutory requirements are met, the district court may still decline to certify an interlocutory
27 appeal. *See, e.g., Costar Grp., Inc. v. Com. Real Est. Exch., Inc.*, No. 20-cv-08819, 2023 WL
28 6783957, at *3 (C.D. Cal. July 20, 2023); *Home Depot U.S.A., Inc. v. E.I. DuPont de Nemours &*

¹Co., No. 16-cv-04865, 2019 WL 6171063, at *1 (N.D. Cal. Nov. 20, 2019).

III. ANALYSIS

The Court concentrates its analysis on the third element in the above-referenced test, finding it dispositive of the pending motion (*i.e.*, whether “an immediate appeal from the order may materially advance the ultimate termination of the litigation”). Rather than “materially advance” this litigation, the Court determines an “immediate appeal” would be disruptive to this litigation as well as to coordination efforts external to the MDL.

Because the court finds that defendants fail to satisfy their burden to establish the third requirement of section 1292(b), the court declines to address the statute's first two requirements.⁴

A. Internal Coordination: Individual Plaintiff, State Attorneys General, and Local Government and School District Complaints

“[T]he ‘materially advance’ prong is satisfied when the resolution of the question ‘may appreciably shorten the time, effort, or expense of conducting’ the district court proceedings.” *ICTSI Oregon, Inc. v. Int’l Longshore & Warehouse Union*, 22 F.4th 1125, 1131 (9th Cir. 2022) (quoting *In re Cement Antitrust Litig. (MDL No. 296)*, 673 F.2d 1020, 1027 (9th Cir. 1981), *aff’d sub nom. Arizona v. Ash Grove Cement Co.*, 459 U.S. 1190 (1983)). This element is best understood by analyzing the impact of certification of an appeal on coordination in this MDL across individual, local government and school district, as well as state Attorneys General plaintiffs.

Defendants argue, in relevant part, that the questions raised for certification present threshold issues for numerous cases, such that appellate resolution in defendants' favor would save months (or even years) of litigation. Plaintiffs disagree claiming the arguments are entirely speculative and substantial litigation would remain in any event. In response, defendants posit that because the Court's order addressed plaintiffs' "priority" claims, the remaining claims would likely not survive if the priority claims failed on appeal.

⁴ Further, even if defendants had met their burden on all three statutory requirements, the court would decline to certify defendants' interlocutory appeal as an act of discretion, based on the case management concerns discussed in this order. *See Swint*, 514 U.S. at 47; *Costar Grp.*, 2023 WL 6783957, at *3.

1 Defendants ignore that the Court has yet to rule on the claims of both the state attorneys
2 general and the school districts and the related motions which contain overlapping, but not
3 identical issues. The extent of the overlap is unclear. Defendants' claim that there is none is
4 disputed. Thus, the Court remains significantly concerned that immediate appellate review would
5 likely lead to piecemeal appeals, compound delays, and increase inefficiencies.

6 **B. External Coordination: Parallel State Proceedings**

7 An MDL transferee court's mandate is to "promote the just and efficient conduct" of the
8 centralized actions "for coordinated or consolidated pretrial proceedings." 28 U.S.C. § 1407. As
9 part of its discretion in devising strategies to efficiently manage the consolidated litigation, the
10 transferee court may look to coordinate its timeline with state courts handling related litigation.
11 See WRIGHT & MILLER, 15 FED. PRAC. & PROC. JURIS. § 3866 (4th ed.) ("[A] transferee court may
12 coordinate discovery and other pretrial activities with one or more state courts that are handling
13 related or overlapping litigation. Such inter-system collaboration is obviously a salutary
14 development." (footnote omitted)).

15 In ruling on motions to certify interlocutory appeal, transferee courts have noted how an
16 interlocutory appeal could disrupt otherwise aligned schedules in parallel proceedings—thereby
17 creating a missed opportunity for more efficient management of the collective proceedings. See
18 *Certain Underwriters at Lloyd's, London v. ABB Lummus Glob., Inc.*, No. 03-cv-7248, 2004 WL
19 1286806, at *7 (S.D.N.Y. June 10, 2004) (appeal "would complicate the broader litigation of the
20 Plan because related issues and arguments would be proceeding in different courts on different
21 schedules"); see also *Travelers Prop. Cas. Co. of Am. v. Centex Homes*, No. 11-cv-03638, 2019
22 WL 285928, at *10 (N.D. Cal. Jan. 22, 2019) ("Given that the pending state court appeal may yet
23 have an impact on the issues before this court, such an interlocutory appeal is premature, and risks
24 undermining the goals of judicial efficiency.").

25 While the Court does not—and cannot—require strict coordination of cases not before it,
26 the Court is attentive to parallel litigation in state court not consolidated into this MDL and
27 mindful of the potential effect an early interlocutory appeal here may have on those proceedings.
28 For instance, this Court's schedule currently aligns with that of the JCCP court, which currently

1 anticipates setting bellwether trial dates for next year. Similarly, and as referenced, *supra*, the
2 thirty-three state Attorneys General who filed a joint complaint in this action on October 24, 2023,
3 are coordinating with eight additional state Attorneys General who filed lawsuits alleging similar
4 state consumer protection law violations against defendant Meta in their state courts (Dkt.
5 No. 434, Status Update Regarding Plaintiff States' Leadership at 3.) While tight coordination may
6 not always be possible, the Court finds it most efficient to maintain this MDL's current
7 momentum and alignment with the JCCP and other proceedings.

8 **IV. CONCLUSION**

9 For the foregoing reasons, the Court **DENIES** defendants' motion to certify an interlocutory
10 appeal.

11 This terminates Dkt. No. 473.

12 **IT IS SO ORDERED.**

13 Dated: February 2, 2024

14 
15 YVONNE GONZALEZ ROGERS
16 UNITED STATES DISTRICT JUDGE